
SENATE BILL 5402

State of Washington

57th Legislature

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By Senators Kline, Franklin, Fairley, McAuliffe, Kohl-Welles, Shin, Regala, Costa, Carlson and Gardner; by request of Governor Locke

Read first time 01/22/2001. Referred to Committee on Judiciary.

1 AN ACT Relating to sentencing of hate crimes; and amending RCW
2 9.94A.390.

3 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

4 **Sec. 1.** RCW 9.94A.390 and 2000 c 28 s 8 are each amended to read
5 as follows:

6 The court may impose a sentence outside the standard sentence range
7 for an offense if it finds, considering the purpose of this chapter,
8 that there are substantial and compelling reasons justifying an
9 exceptional sentence. Whenever a sentence outside the standard
10 sentence range is imposed, the court shall set forth the reasons for
11 its decision in written findings of fact and conclusions of law. A
12 sentence outside the standard sentence range shall be a determinate
13 sentence.

14 If the sentencing court finds that an exceptional sentence outside
15 the standard sentence range should be imposed, the sentence is subject
16 to review only as provided for in RCW 9.94A.210(4).

17 A departure from the standards in RCW 9.94A.400 (1) and (2)
18 governing whether sentences are to be served consecutively or
19 concurrently is an exceptional sentence subject to the limitations in

1 this section, and may be appealed by the offender or the state as set
2 forth in RCW 9.94A.210 (2) through (6).

3 The following are illustrative factors which the court may consider
4 in the exercise of its discretion to impose an exceptional sentence.
5 The following are illustrative only and are not intended to be
6 exclusive reasons for exceptional sentences.

7 (1) Mitigating Circumstances

8 (a) To a significant degree, the victim was an initiator, willing
9 participant, aggressor, or provoker of the incident.

10 (b) Before detection, the defendant compensated, or made a good
11 faith effort to compensate, the victim of the criminal conduct for any
12 damage or injury sustained.

13 (c) The defendant committed the crime under duress, coercion,
14 threat, or compulsion insufficient to constitute a complete defense but
15 which significantly affected his or her conduct.

16 (d) The defendant, with no apparent predisposition to do so, was
17 induced by others to participate in the crime.

18 (e) The defendant's capacity to appreciate the wrongfulness of his
19 or her conduct, or to conform his or her conduct to the requirements of
20 the law, was significantly impaired. Voluntary use of drugs or alcohol
21 is excluded.

22 (f) The offense was principally accomplished by another person and
23 the defendant manifested extreme caution or sincere concern for the
24 safety or well-being of the victim.

25 (g) The operation of the multiple offense policy of RCW 9.94A.400
26 results in a presumptive sentence that is clearly excessive in light of
27 the purpose of this chapter, as expressed in RCW 9.94A.010.

28 (h) The defendant or the defendant's children suffered a continuing
29 pattern of physical or sexual abuse by the victim of the offense and
30 the offense is a response to that abuse.

31 (2) Aggravating Circumstances

32 (a) The defendant's conduct during the commission of the current
33 offense manifested deliberate cruelty to the victim.

34 (b) The defendant knew or should have known that the victim of the
35 current offense was particularly vulnerable or incapable of resistance
36 due to extreme youth, advanced age, disability, or ill health.

37 (c) The current offense was a violent offense, and the defendant
38 knew that the victim of the current offense was pregnant.

1 (d) The current offense was a major economic offense or series of
2 offenses, so identified by a consideration of any of the following
3 factors:

4 (i) The current offense involved multiple victims or multiple
5 incidents per victim;

6 (ii) The current offense involved attempted or actual monetary loss
7 substantially greater than typical for the offense;

8 (iii) The current offense involved a high degree of sophistication
9 or planning or occurred over a lengthy period of time; or

10 (iv) The defendant used his or her position of trust, confidence,
11 or fiduciary responsibility to facilitate the commission of the current
12 offense.

13 (e) The current offense was a major violation of the Uniform
14 Controlled Substances Act, chapter 69.50 RCW (VUCSA), related to
15 trafficking in controlled substances, which was more onerous than the
16 typical offense of its statutory definition: The presence of ANY of
17 the following may identify a current offense as a major VUCSA:

18 (i) The current offense involved at least three separate
19 transactions in which controlled substances were sold, transferred, or
20 possessed with intent to do so;

21 (ii) The current offense involved an attempted or actual sale or
22 transfer of controlled substances in quantities substantially larger
23 than for personal use;

24 (iii) The current offense involved the manufacture of controlled
25 substances for use by other parties;

26 (iv) The circumstances of the current offense reveal the offender
27 to have occupied a high position in the drug distribution hierarchy;

28 (v) The current offense involved a high degree of sophistication or
29 planning, occurred over a lengthy period of time, or involved a broad
30 geographic area of disbursement; or

31 (vi) The offender used his or her position or status to facilitate
32 the commission of the current offense, including positions of trust,
33 confidence or fiduciary responsibility (e.g., pharmacist, physician, or
34 other medical professional).

35 (f) The current offense included a finding of sexual motivation
36 pursuant to RCW 9.94A.127.

37 (g) The offense was part of an ongoing pattern of sexual abuse of
38 the same victim under the age of eighteen years manifested by multiple
39 incidents over a prolonged period of time.

1 (h) The current offense involved domestic violence, as defined in
2 RCW 10.99.020, and one or more of the following was present:

3 (i) The offense was part of an ongoing pattern of psychological,
4 physical, or sexual abuse of the victim manifested by multiple
5 incidents over a prolonged period of time;

6 (ii) The offense occurred within sight or sound of the victim's or
7 the offender's minor children under the age of eighteen years; or

8 (iii) The offender's conduct during the commission of the current
9 offense manifested deliberate cruelty or intimidation of the victim.

10 (i) The operation of the multiple offense policy of RCW 9.94A.400
11 results in a presumptive sentence that is clearly too lenient in light
12 of the purpose of this chapter, as expressed in RCW 9.94A.010.

13 (j) The defendant's prior unscored misdemeanor or prior unscored
14 foreign criminal history results in a presumptive sentence that is
15 clearly too lenient in light of the purpose of this chapter, as
16 expressed in RCW 9.94A.010.

17 (k) The offense resulted in the pregnancy of a child victim of
18 rape.

19 (l) The defendant knew that the victim of the current offense was
20 a youth who was not residing with a legal custodian and the defendant
21 established or promoted the relationship for the primary purpose of
22 victimization.

23 (m) The defendant committed the current offense because of the
24 defendant's perception of the victim's race, color, religion, ancestry,
25 national origin, gender, sexual orientation, or mental, physical, or
26 sensory handicap.

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